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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

BLUE LAGOON ENTERTAINMENT et al., Plaintiffs and Appellants, v. CITY OF LOS ANGELES, Defendant and Respondent.	B212667 (Los Angeles County Super. Ct. No. BS113605)

APPEAL from a judgment of the Superior Court of Los Angeles County. James C. Chalfant, Judge. Affirmed.

Roger Jon Diamond for Plaintiffs and Appellants.

Rockard J. Delgadillo, City Attorney, Jeri L. Burge, Assistant City Attorney, and Terry P. Kaufmann Macias, Deputy City Attorney for Defendant and Respondent.

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Plaintiffs Blue Lagoon Entertainment and Richard Fedoruk (Blue Lagoon) appeal from a judgment denying Blue Lagoon's petition for a writ of administrative mandamus, seeking to set aside the denial by the City of Los Angeles (City) of Blue Lagoon's application for a conditional use permit (CUP) and variance to open and operate a hostess dance hall in a building in downtown Los Angeles. Because substantial evidence supports City's findings and the findings support the denial of Blue Lagoon's application, we affirm the judgment.

BACKGROUND

Blue Lagoon filed an application with City's Planning Department seeking a CUP to permit a hostess dance hall with 128 seats and live entertainment to be operated in the basement level of an existing building at 1240 South Main Street in Los Angeles. The upper six floors of the building are occupied by textile and garment manufacturing businesses. The proposed project is in the Fashion District in downtown Los Angeles and in an area zoned M2-2D, a light industrial zone. (See L.A. Mun. Code, § 12.04, subd. A.32.)[1] Blue Lagoon also sought a variance from the requirement to provide 22 on-site parking spaces so as to provide off-site parking secured by a lease instead of the required recorded covenant.

Hostess dance halls are not permitted by right in the M2-2D zone, but the zoning administrator, or the Area Planning Commission as the appellate body, may grant a CUP allowing such use. (§ 12.24, subd. W.18(b).) "In approving any conditional use, the decision-maker must find that the proposed location will be desirable to the public convenience or welfare, is proper in relation to adjacent uses or the development of the community, will not be materially detrimental to the character of development in the immediate neighborhood, and will be in harmony with the various elements and objectives of the General Plan." (§ 12.24, subd. E.)

Before a variance is granted, the following findings must be made: "1. that the strict application of the provisions of the zoning ordinance would result in practical

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[1] Unspecified section references are to the Los Angeles Municipal Code (LAMC).

difficulties or unnecessary hardships inconsistent with the general purposes and intent of the zoning regulations; [¶] 2. that there are special circumstances applicable to the subject property such as size, shape, topography, location or surroundings that do not apply generally to other property in the same zone and vicinity; [¶] 3. that the variance is necessary for the preservation and enjoyment of a substantial property right or use generally possessed by other property in the same zone and vicinity but which, because of the special circumstances and practical difficulties or unnecessary hardships, is denied to the property in question; [¶] 4. that the granting of the variance will not be materially detrimental to the public welfare, or injurious to the property or improvements in the same zone or vicinity in which the property is located; and [¶] 5. that the granting of the variance will not adversely affect any element of the General Plan." (§ 12.27, subd. D; L.A. City Charter, art. 5, § 562(c).)

City received a January 10, 2007 letter from the commanding officer of the central community police station of the Los Angeles Police Department (LAPD) stating that the LAPD was not opposed to Blue Lagoon's application as long as certain conditions were imposed. The LAPD suggested numerous conditions, including the provision of three security guards on the premises from one-half hour before opening to one-half hour after the close of business. But on May 2, 2007, the LAPD submitted another letter rescinding its non-opposition to the application, explaining that the LAPD reevaluated the issue after citizens expressed their concerns. City also received opposition to the application from the Board of Directors of the Fashion District of Los Angeles Business Improvement District (BID), the Downtown Los Angeles Neighborhood Council, and property owners in the area.[2]

The BID wrote in opposition that "[t]his multiple story property is a light industrial/manufacturing use located in an area that has been plagued for years by nuisance behavior including pedestrian harassment, drinking in public, gambling,

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[2] The BID consists of a 100-block area of Fashion District properties and 1,000 property owners in the downtown Los Angeles area.

loitering, and urination and defecation. . . . Since 1996, and likely before that time, Fashion District safe teams have addressed complaints from the property owner about office break-ins, trespassing, robberies, assaults, and harassment of females in the building restrooms. The BID has consistently encouraged the property owner to maintain in-house security however the owner claims that security personnel usually leave after a few days because of intimidation. . . . [¶] . . . [¶] The potential increase in nuisance behavior resulting from such nightclubs is inappropriate and costly. Increased break-ins and graffiti tags will increase our insurance rates and cost of providing Fashion District security and maintenance. The fact that no parking is available at this building indicates that customers will be parking off-site which will significantly add to the demands on our nighttime security staff. [¶] Night security service to other parts of the district will be severely reduced if Fashion District night patrols are required to monitor a single problem area. The current 5-year assessment budget will not allow for an increase in security or maintenance patrols to compensate for this change in use."

Blue Lagoon intended to employ four on-site security guards and an average of eight to 10 employees on the premises during operating hours. Blue Lagoon also had entered into a verbal commitment to lease a minimum of 200 off-site parking spaces within 750 feet from the dance hall.

The zoning administrator conducted a public hearing on Blue Lagoon's application in May 2007.[3] Blue Lagoon's representative testified that the proposed dance hall would promote entertainment for local residents and tourists from surrounding hotels and the convention center, would not conflict with general commercial uses in the area, and would operate after most of the businesses in the area are closed. A representative of Downtown South Property Owners testified that the downtown area was changing to a more residential and mixed use community, and the proposed dance hall conflicted with the living environment for a residential community of families with children. The BID

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[3] The zoning administrator's findings and decision contains summaries of the testimony at the public hearing; the record does not contain a transcript of the hearing.

submitted data showing that within a few blocks of the proposed project, over 10,000 residential dwelling units were completed or in the process of being built.

A representative of the BID testified that more retail stores were moving into the area; customers and women pedestrians have been harassed by day laborers and other transients in the area; the BID had hired security officers and clean-up crews to provide security and to keep the area clean and safe; there were many other hostess dance halls in the immediate area of the proposed project that have posed problems since 1994. Officers from the LAPD's Central Vice Unit stated that there were at least seven hostess dance halls near the proposed project, two of which were operated in basements; vice officers frequently encounter prostitution and other illegal activities inside the other hostess dance halls; the proposed project would impose additional demands on police resources and cause detrimental impacts to the community.

In response to concerns that there was only one entrance to, and exit from, the proposed basement dance hall through a stairway from the lobby level on Main Street, and that fire department regulations required emergency access at each side of the assembly room, Blue Lagoon's architect responded that a secondary emergency exit through a fire-rated exit corridor would be installed to lead from the basement to the alley outside of the building.

Pursuant to section 12.24, subdivision E, the zoning administrator made the following findings:

(1) "The proposed location will not be desirable to the public convenience or welfare." The zoning administrator noted that there were eight hostess dance halls within a half-mile radius of the proposed project and that "the area is not in need of additional hostess dance venues and denial of the project will not result in a public inconvenience . . . ." Citing testimony by police officers and others, the zoning administrator found that "considering nuisance activities in the area and common problems associated with hostess dance halls, the project will require additional demands on police resources and more likely than not, will result in detrimental impacts to public welfare."

(2) "The location is not proper in relation to adjacent uses or the development of the community." Noting that the area is developed with commercial buildings used as both wholesale and retail garment industry establishments, the zoning administrator stated that "due to the recent housing boom and the revitalization effort by local and state agencies as well as mixed use developments that were encouraged by the applicable general plans, there are thousands of new residential dwelling units that have either been built or are proposed in the Downtown area. . . . There are many half-way houses/transitional housing along Main Street south of Olympic Boulevard. . . . Further, there is a church . . . at 218 East 12th Street, and a school (Los Angeles Job Corp School) and residential building at 1106 South Broadway. The idea of utilizing the basement of the existing building that has been vacant for quite some time for the proposed hostess dance hall is a good one. However, the land use decision should be considered in the context of the neighboring properties in the project area. The hostess dance hall attracts adult entertainment venues and is not proper in relation to the surrounding properties, which have been developed with residential units and mixed use projects as well as commercial uses that attract women and students in the immediate vicinity of the project site."

(3) "The use will be materially detrimental to the character of the development in the immediate neighborhood." The zoning administrator found that in light of the "nuisance activities in the project area and the nature of the proposed use, the proposed dance hall will be materially detrimental to the residential and mixed use character of the development in the Fashion District."

(4) "The proposed location will not be in harmony with the various elements and objectives of the General Plan." The zoning administrator explained that "[t]he use of the basement of the existing building for commercial use is consistent with the community plan's goal of concentrating commercial areas in designated commercial planned locations. However, the nature of the proposed use will attract adult entertainment venues; the hostess dance hall is not in harmony with the surrounding properties which are improved with the residential developments in close vicinity of the project site

resulting in detrimental impacts to the area that has already been plagued by nuisance and criminal activities."

With respect to the parking variance, the zoning administrator stated that the municipal code permits parking to be provided on an off-site location within 750 feet from the project site by recording a covenant and agreement. However, Blue Lagoon provided a letter from its representative stating that a 10-year lease agreement for off-street parking has been made with the owner of the parking lot across the street from the proposed dance hall, but "the parking lease agreement has not been submitted to the file and the parking location was not specifically identified by the address. On October 5, 2007, the applicant's architect clarified that the applicant has made a verbal agreement with the parking lot owner across the street to provide the required parking spaces through a parking agreement in lieu of the recorded covenant and agreement. . . . However, the applicant did not submit any justification as to why the covenant and agreement for the required parking on the off-site location cannot be provided. . . . [¶] . . . [¶] . . . There are no special circumstances applicable to the project site that would make the required covenant and agreement infeasible to obtain."

The zoning administrator also explained that "[p]rotecting residential and commercial land uses from impacts of other uses as well as the land use compatibility are an appropriate objective in any discretionary action and the focus of the Municipal Code. The request to allow the required parking spaces to be provided through a parking agreement in lieu of the required covenant and agreement is neither inherently good nor bad; the fundamental issue is the manner [in] which it was presented. The applicant did not submit any justification as to why the required covenant and agreement could not be provided. The applicant vaguely indicated that a verbal agreement for the required parking was made with an owner of the off-site parking lot. The applicant's architect informed the Zoning Administrator that the parking agreement will be made after the project is approved. . . . The Zoning Administrator agrees with the comments received from the Downtown Neighborhood Council in that the limited information provided by the applicant in response to the issues including the off-site parking did not demonstrate

that the project will be operated in a manner which would not generate adverse impacts including crime and public safety impacts to the surrounding residential and commercial uses."

With respect to the issue of emergency access, the zoning administrator determined that Blue Lagoon's plan "does not show the dimensions of the proposed fire [escape] route. . . . [T]he fire escape route is connected to the door to the alley. In case of an emergency, physically challenged persons may not be able to reach access through the stairs to the door leading to the alley. If the door at the alley is used for emergency access, it should be kept open during the business hours between 7 p.m. and 2 a.m.; however, the private alley is primarily to be used for the loading area and due to the existing and potential loitering and crime activities in the area, it is not safe to keep the door at the alley open." In rejecting the findings of the Planning Department's Environmental Review Section in its mitigated negative declaration (MND), the zoning administrator stated that the MND "should have included analysis and appropriate mitigation measures for emergency and safety impacts in order to address potential impacts associated with the emergency access, nuisance and crime activities."

Blue Lagoon appealed the zoning administrator's decision to the Central Area Planning Commission (Commission). At the hearing before the Commission, Blue Lagoon's attorney argued that the zoning administrator abused her discretion in denying the CUP outright without regard to whether the imposition of conditions would address safety and parking concerns. Blue Lagoon's attorney maintained, "[M]y client will comply with all fire regulations, with all health and safety code regulations. [¶] If there's a concern, my client will agree to any condition that's reasonable that's related to that. If there's a problem with exits, they'll put in however many exits are necessary. If there's a problem with access by ramps or stairs or whatever, all of those things will be taken care of." Blue Lagoon's attorney also explained that his client attempted to get a written confirmation from the operator of the parking lot across the street from the proposed hostess dance hall that all of the parking spaces would be available for its use, but the

operator "did not want to put anything in writing because they fear the government, they fear the police, they fear political reprisals."

Testifying against Blue Lagoon, a representative of the LAPD stated that in the area of the proposed project there were eight other hostess dance halls that the local vice unit of the LAPD needed to "constantly monitor to make sure we don't have illegal activities." The officer pointed out that the wages of the dancers at the hostess dance halls were based primarily on tips, and "if the tips involve dancing, then inherently there is going to be . . . some extra something that these women are going to have to do in order to get the tips, and that's where police come in . . . ."

Another police officer testified that the area was once industrial, but was changing to become more of a residential area; the crime in the area, especially car burglaries, was increasing. A representative of the BID stated that 80 percent of the retail stores in the Fashion District cater to women and children and a hostess dance hall was incompatible with the retail businesses in the area. Another BID representative testified that beginning in 1994, the BID received numerous complaints of activities in the upper floors at 1240 South Main, including gambling, graffiti, loitering, drinking in public, drug activity, urination, defecation, and the harassment of women in the restrooms; opening a hostess dance hall in the basement of the building would not help the problems already existing in the building.

By a five-to-zero vote, the Commission denied the appeal and adopted the findings of the zoning administrator.

Blue Lagoon filed a petition for a writ of administrative mandamus, alleging that in denying its application, the zoning administrator and the Commission abused their discretion and did not proceed in the manner required by law because substantial evidence mandated that City grant the CUP and variance *with conditions*. Blue Lagoon asserted that the conditions to which it was agreeable "would have fully satisfied any concerns of . . . City . . . ." City filed an answer and opposition to the petition, and Blue Lagoon filed an opening brief and reply memorandum. After a hearing on the petition,

the trial court issued a judgment denying the petition. Blue Lagoon appealed from the judgment.

Blue Lagoon's principal contention on appeal is that City abused its discretion in denying its application outright because "there [was] no evidence in the record to support any conclusion that the conditions suggested by the [LAPD] would not solve any perceived problem. Essentially what . . . City [is] arguing in this case is that there are no conditions that can solve the problems of hostess clubs. If that is true why are seven of them operating in the area? There is no principled explanation for why some clubs get approved and others do not."

Notwithstanding Blue Lagoon's impassioned plea, the principled explanation for the denial of its application lies in the provisions of the LAMC governing hostess dance halls, which Blue Lagoon does not discuss in any detail. Blue Lagoon's briefs do not challenge the validity of the provisions of the LAMC governing the issuance of CUP's and variances.[4] We thus proceed to discuss whether City's findings are supported by substantial evidence.

DISCUSSION

A. Standard of Review

In considering an application for a CUP, "a city is obligated to examine permit applications on an individual basis, applying sound principles of planning and zoning administration in a fair manner. A CUP is discretionary by definition. [Citation.] An applicant is not entitled to a [CUP] merely because it complies with [applicable] codes."

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[4] The standards relating to the granting of a CUP set out in section 12.24, subdivision E have been upheld against claims of unconstitutional vagueness. (*SP Star Enterprises, Inc. v. City of Los Angeles* (2009) 173 Cal.App.4th 459, 473 (*SP Star Enterprises*).) "[L]and use ordinances precluding uses detrimental to the '"general welfare"' are not unconstitutionally vague. [Citation.] 'In fact, a substantial amount of vagueness is permitted in California zoning ordinances: "[I]n California, the most general zoning standards are usually deemed sufficient. 'The standard is sufficient if the administrative body is required to make its decision in accord with the general health, safety, and welfare standard.' [Citation.]"'" (*Ibid*.)

(*BreakZone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205, 1224 (*BreakZone Billiards*).) "Findings must be made by the quasi-judicial body as part of its determination of whether to grant or deny a CUP. [Citation.] Such findings must be supported by substantial evidence in light of the entire record. Appellate courts review such adjudicatory planning actions under the substantial evidence standard, looking to the administrative record to determine whether the agency's decision is supported by substantial evidence and whether the findings of the agency support the decision made. [Citation.] Reasonable doubts must be resolved in favor of the decision of the agency." (*Id*. at p. 1244.) We may reverse an agency's decision only if, based on the evidence before the agency, a reasonable person could not reach that conclusion. (*Ibid*.)

"Under the substantial evidence test, the agency's findings are presumed to be supported by the administrative record and the appellant challenging them has the burden to show they are not." (*SP Star Enterprises*, *supra*, 173 Cal.App.4th at p. 469.)

B. Substantial Evidence Supports Findings Denying CUP and Variance

Pursuant to section 12.24, subdivision E, there were four findings which were the basis for the denial of the CUP: (1) that the proposed hostess dance hall was not desirable to the public convenience or welfare; (2) that the location was not proper in relation to adjacent uses and the development of the community; (3) that the use will be materially detrimental to the character of the development in the immediate neighborhood; and (4) that the project will not be in harmony with the various elements and objectives of the general plan.

Business leaders and police officers testified that the character of the neighborhood was in transition from purely industrial and retail to residential and mixed uses; that a hostess dance hall attracts adult entertainment venues, associated with nuisance issues and increased crime; the project would place additional demands on police resources to address nuisance issues, increased crime, and harassment of women and students in the area; and that the hostess dance hall use would not be in harmony with the surrounding neighborhood, which was becoming increasingly residential, and thus the project would not be in harmony with an objective of the general plan to protect

residential and commercial land uses from adverse impacts. The foregoing provides substantial evidence in support of the four required findings under section 12.24, subdivision E. "In reaching a decision on an application for a CUP it is . . . appropriate for an agency to consider traffic, parking, safety, noise and nuisance problems; these clearly represent concerns that are well within the domain of the public interest and public welfare." (*BreakZone Billiards*, *supra*, 81 Cal.App.4th at p. 1246.) "[C]oncern of neighbors is sufficient to constitute substantial evidence that a contemplated use is detrimental to the welfare of the community." (*SP Star Enterprises*, *supra*, 173 Cal.App.4th at p. 476.) And as stated by the zoning administrator, "Protecting residential and commercial land uses from impacts of other uses as well as the land use compatibility are an appropriate objective in any discretionary action and focus of the Municipal Code."

Los Angeles City Charter section 562 and the substantially similar provisions of LAMC section 12.27, subdivision D contain the five findings required to grant a variance. In this case, Blue Lagoon sought a variance from the provisions of the zoning code with respect to parking requirements.

The first three findings required to grant a variance relate to the applicant's justification for relief from the strict application of the zoning codes regulating parking based on "practical difficulties or unnecessary hardships"; the latter two findings relate to adverse impacts on the public welfare and the general plan. The latter two issues are similar to the findings made in connection with the CUP, and we conclude that substantial evidence likewise supports the variance findings. With respect to issues of "practical difficulties or unnecessary hardships," City found that Blue Lagoon did not adequately provide an explanation why it could not have obtained the required recorded covenant or even a written commitment from the operator of the parking lot across the street from the proposed dance hall. Although Blue Lagoon established that the operator of the parking lot was not willing to provide a written agreement, but only a verbal commitment, due to fear of police and government reprisals, City reasonably could have inferred that the parking lot operator ultimately might be reluctant to enter into a lease

with Blue Lagoon, regardless of any approvals for the dance hall. Accordingly, the lack of provision for off-site parking supported City's conclusion that Blue Lagoon had not adequately shown that its business will be operated so as not to adversely impact public safety and the objective of the general plan to protect residential and commercial land uses.

We conclude that Blue Lagoon failed to meet its burden of showing that the administrative findings are not supported by substantial evidence.

DISPOSITION

The judgment is affirmed. The parties are to bear their own costs on appeal.

NOT TO BE PUBLISHED.

MALLANO, P. J.

We concur:

ROTHSCHILD, J.

CHANEY, J.